

SOKAOGON CHIPPEWA COMMUNITY, MOLE LAKE BAND, Appellant	: Order Docketing Appeals, Vacating : Decisions, and Referring Appeals to : Assistant Secretary - Indian Affairs : : : Docket Nos. IBIA 94-117-A : IBIA 94-118-A : : August 2, 1994
v.	
ACTING MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	

These are appeals from two April 13, 1994, decisions of the Acting Minneapolis Area Director, Bureau of Indian Affairs, one denying an application for a FY 1994 Training and Technical Assistance grant, and the other denying an application for a FY 1994 Planning grant.

The first decision stated:

We regretfully inform you that your application for the Training and Technical Assistance Grant Program, per Federal Register, Vol 58, No. 247, Tuesday, December 28, 1993, has been denied due to lack of funding.

The Minneapolis Area Office received an allocation of \$220,000 for the Planning Grant Program and the Training & Technical Assistance Grant Program for Fiscal Year 1994. Funding requested by the tribal applicants exceeded the available funding level. Your application was rated and reviewed per the provisions set forth in the above referenced Federal Register announcement notice.

The second decision was identical except that it denied appellant's Planning grant application.

In the pre-docketing notice for these appeals, the Board stated: "Neither [decision] explains why appellant's applications did not receive ratings high enough to be funded. Accordingly, when the Area Director submits the administrative records for these appeals, as described below, she shall also furnish copies of the records to appellant. [Emphasis in original]." By imposing this requirement, the Board expected that appellant would receive copies of the reviewers' rating sheets for its applications and/or other information explaining the reasons for the denial of its applications.

The Board received the administrative records on July 29, 1994. The records do not contain the reviewers' rating sheets. ^{1/} The only information concerning the rating of appellant's applications is contained on a page which shows the scores, amount of grant requests, and amount of funding for several tribes. Appellant is shown as having received scores of 0 for both its Training and Technical Assistance and Planning grant applications. However, there is nothing in the records to show why appellant's applications were given scores of 0.

Further, the fact that appellant's applications received scores of 0 casts doubt on the statement in the Area Director's decisions that the applications were denied due to lack of funding. The Board finds it hard to believe that an application which was poor enough to warrant a score of 0 would have been awarded a grant, no matter how much funding was available. It seems at least possible that appellant's applications were not actually reviewed and rated, as the Area Director stated, but were instead rejected for some procedural reason not reflected in the decisions or the records.

As the Board has stated on a number of occasions, it is a violation of due process to deny an application for financial assistance on grounds not communicated to the applicant. Spokane Tribe v. Acting Portland Area Director, 24 IBIA 227 (1993), and cases cited therein. The Board attempted to grant the Area Director some leeway here by allowing her to furnish appellant with the necessary information in the context of this appeal. However, the Board's attempt proved unsuccessful when the administrative records, like the decisions, failed to disclose the reasons for denial. Clearly, the Area Director's decisions in these appeals are not supported by the records.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CER 4.1 these appeals are docketed and the Area Director's April 13, 1994, decisions are vacated. As it did in Spokane Tribe, where a violation of due process was found and where no immediate remedy was apparent, the Board refers these appeals to the Assistant Secretary - Indian Affairs for further consideration and exercise of her discretionary authority.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

^{1/} Oddly, the records do not even contain copies of appellant's applications.